

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

**MICHAEL R. BAKER, M.D.**

Holder of License No. 21813  
For the Practice of Allopathic Medicine  
In the State of Arizona

Case No. MD-08-0020B

**CONSENT AGREEMENT FOR  
LETTER OF REPRIMAND**

**CONSENT AGREEMENT**

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Michael R. Baker, M.D. ("Respondent"), the parties agree to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement or any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

5. This Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any waiver,

1 express or implied, of the Board's statutory authority or jurisdiction regarding any other  
2 pending or future investigation, action or proceeding. The acceptance of this Consent  
3 Agreement does not preclude any other agency, subdivision or officer of this State from  
4 instituting other civil or criminal proceedings with respect to the conduct that is the subject  
5 of this Consent Agreement.

6 6. All admissions made by Respondent are solely for final disposition of this  
7 matter and any subsequent related administrative proceedings or civil litigation involving  
8 the Board and Respondent. Therefore, said admissions by Respondent are not intended  
9 or made for any other use, such as in the context of another state or federal government  
10 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or  
11 any other state or federal court.

12 7. Upon signing this agreement, and returning this document (or a copy thereof) to  
13 the Board's Executive Director, Respondent may not revoke the acceptance of the  
14 Consent Agreement. Respondent may not make any modifications to the document. Any  
15 modifications to this original document are ineffective and void unless mutually approved  
16 by the parties.

17 8. If the Board does not adopt this Consent Agreement, Respondent will not  
18 assert as a defense that the Board's consideration of this Consent Agreement constitutes  
19 bias, prejudice, prejudgment or other similar defense.

20 9. This Consent Agreement, once approved and signed, is a public record that will  
21 be publicly disseminated as a formal action of the Board and will be reported to the  
22 National Practitioner Data Bank and to the Arizona Medical Board's website.

23 10. If any part of the Consent Agreement is later declared void or otherwise  
24 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force  
25 and effect.

1 11. Any violation of this Consent Agreement constitutes unprofessional conduct  
2 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order,  
3 probation, consent agreement or stipulation issued or entered into by the board or its  
4 executive director under this chapter") and 32-1451.

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8 MICHAEL R. BAKER, M.D.

DATED: 20 APRIL 2009

## **FINDINGS OF FACT**

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 21813 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-08-0020B after receiving notification of a malpractice settlement involving Respondent's care and treatment of a six-year-old male patient ("DL").

4. On March 3, 2005, DL underwent a right rib surgical biopsy at the wrong level (4<sup>th</sup> rib) and the biopsy was nondiagnostic. Subsequently, DL underwent surgery at the correct level and the diagnosis was Ewing's Sarcoma. Surgery was scheduled to follow three months of chemotherapy.

5. On June 29, 2005, Respondent performed a percutaneous computed tomography (CT) guided localization procedure to mark the right 6<sup>th</sup> rib and tumor prior to surgical resection. Respondent placed the localization wire through the location of the existing scar from the prior nondiagnostic surgical biopsy resulting in the marking of the right 4<sup>th</sup> rib rather than the 6<sup>th</sup> rib. Additional CT images were obtained since the tumor was not apparent where the localization was done. The additional CT images did not show the original sarcoma, but only post-biopsy changes of the right 4<sup>th</sup> rib related to the original wrong level surgical biopsy. Respondent was informed that the tumor was not likely visible since it had regressed after treatment due to chemotherapy and radiation. A bone scan reportedly demonstrated abnormal uptake in the right 4<sup>th</sup> rib that Respondent thought was tumor related since he was never informed of the wrong level biopsy.

6. On June 30, 2005, a surgeon removed portions of DL's 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> rib, a portion of his right lung, and all of the pectoral muscle, but he did not remove the tumor at

1 the 6<sup>th</sup> rib. DL required an additional surgery to remove portions of the 6<sup>th</sup> and 7<sup>th</sup> rib and  
2 adjacent soft tissues. DL suffered a significant permanent chest wall deformity.

3 7. The standard of care requires a physician to accurately mark the rib of  
4 interest with CT localization as requested by the surgeons.

5 8. Respondent deviated from the standard of care because he did not mark the  
6 sixth rib as requested by the surgeons.

7 9. DL suffered unnecessary surgery and significant permanent chest wall  
8 deformity. DL could have suffered possible additional associated pain and there was long-  
9 term potential for complications reportedly including scoliosis and pulmonary insufficiency.

#### 10 CONCLUSIONS OF LAW

11 1. The Board possesses jurisdiction over the subject matter hereof and over  
12 Respondent.

13 2. The conduct and circumstances described above constitute unprofessional  
14 conduct pursuant to A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be  
15 harmful or dangerous to the health of the patient or the public.").

#### 16 ORDER

17 IT IS HEREBY ORDERED THAT:

18 1. Respondent is issued a Letter of Reprimand.

19 2. This Order is the final disposition of case number MD-08-0020B.

20 DATED AND EFFECTIVE this 4<sup>th</sup> day of June, 2009.



ARIZONA MEDICAL BOARD

By *Lisa S. Wynn*  
f Lisa S. Wynn  
Executive Director

1 ORIGINAL of the foregoing filed  
2 this 4<sup>th</sup> day of June, 2009 with:

3 Arizona Medical Board  
4 9545 E. Doubletree Ranch Road  
5 Scottsdale, AZ 85258

6 EXECUTED COPY of the foregoing mailed  
7 this 4<sup>th</sup> day of June, 2009 to:

8 Michael R. Baker, M.D.  
9 Address of Record

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12 Investigational Review  
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